

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 28, 2021

Lyle W. Cayce
Clerk

No. 20-60518

DAVID WARE,

Petitioner—Appellant,

versus

BURL CAIN, *Commissioner, Mississippi Department of Corrections,*

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:20-CV-28

ORDER:

David Ware, Mississippi prisoner # 214212, was convicted of selling a controlled substance. He now seeks a certificate of appealability (“COA”) under 28 U.S.C. § 2253(c). The district court dismissed his petition, concluding his claims were procedurally defaulted or barred from federal review. With the benefit of liberal construction, Ware argues that the district court erred in its procedural ruling.

To obtain a COA, Ware must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). Where, as here, the district court dismissed his petition on procedural grounds, Ware is required to demonstrate “that jurists

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of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Ware has not made the requisite showing. Accordingly, his motion for a COA is DENIED.



ANDREW S. OLDHAM
United States Circuit Judge



**Certified as a true copy and issued
as the mandate on Jun 21, 2021**

Attest: 
Clerk, U.S. Court of Appeals, Fifth Circuit